

ORIGINAL

(18)
12-20-00
MA

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JOE KING,

Petitioner,

)
VS.
)

)
RAYMOND COLLERAN, Superintendent
SCI-Waymart, Attorney General
of Pennsylvania,

)
Respondent.

) NO: 1:00-cv-01389
1 Lamb

) FILED
HARRISBURG

) DEC 19 2000

) MARY E. D'ANDREA, CLERK
Per _____ DEPUTY CLERK

PETITIONER'S OBJECTIONS TO COMMONWEALTH ANSWER

TO WRIT OF HABEAS CORPUS, FILED UNDER § 2254

COMES NOW, Joe King, Petitioner in the above captioned case matter
Respectfully filing his PETITIONER'S OBJECTIONS COMMONWEALTH'S ANSWER TO
WRIT OF HABEAS FILED UNDER § 2254, to this Honorable Court. Petitioner offers
the following in support of his cause:

1. Petitioner avers that on/or about November 21, 2000 the District Attorney's Office of Dauphin County Pennsylvania against the Petition for Writ of Habeas Corpus filed by the Petitioner on/or about August 7, 2000.
2. Petitioner avers that in the Commonwealth's answer to the claim of a State 1100 Rule violation, which guarantees that defendant will be tried within a set time period, and while the Commonwealth claims the writ of habeas corpus cannot be granted for a state violation it failed to address the issue of the violation that the Commonwealth accrued in the dereliction of doing their own duty. In the statement that the writ and/or claim must be dismissed for time bar and state violations not reaching a constitutional level, they forgot that this instant case was decided on March 12, 1996 and therefore falls prior to the enactment of the Anti-Terrorism and Effective Death Penalty Act of 1996 which became effective April 24, 1996, hence the ex-post facto rulings apply in this instant case further the issue of the 1100 rule violation was presented and rules upon by the Court of Common Pleas of Dauphin

County by denial of relief on March 12, 1996 (see exhibit Docket report) further on March 12, 1996 the sentencing was deferred to April 24, 1996.

3. Petitioner avers that the District Attorney failed to research this instant case in his haste to file an answer, and ask for a dismissal, as note 2 shows the District Attorney/Respondents did not answer the writ and claim to answer later if this Honorable Court does not dismiss a lawful writ.

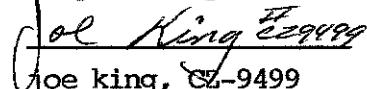
4. Petitioner avers that he (Petitioner) requested counsel to appeal the verdict of the court, without results, as an unlearned and untrained legal person petitioner did opt to file a PCRA Petition on/or about May 13, 1996 to preserve his issues and appeal the findings of the court, which was dismissed on/or about May 15, 1996 as defendant had not been sentenced yet which took place on May 16, 1996, the very fact that the District Attorney is using legal jargon to dismiss a case is an obstruction of justice and in answer the petitioner asks this Honorable Court to dismiss the Commonwealth's Request for dismissal of the writ of habeas corpus and give Order for the Commonwealth to address the issues presented.

5. Petitioner avers that numerous attempts were made to contact Mr. Mike Duda of the Dauphin County Public Defenders Office without response from Mr. Duda, and further the counsel was requested to appeal, and eventually asked to step down from the instant case so new counsel could be appointed, which was the crux of the PCRA Petition placed in the court. (see attached exhibit PCRA Petition).

6. Petitioner avers that counsel assured the petitioner in April of 1997 that he had indeed filed an appeal to the Superior Court of Pennsylvania, which in fact was not filed as shown by the District Attorney's own Answer to this writ, therefore reinforcing the fact that counsel was inept and incompetent, denying the petitioner Guarantees under the United States Constitution and further failing to preserve issues that would be valid and important to the instant case.

WHEREFORE, the above stated reasons and in the interest of Justice the petitioner Prays this Honorable Court Dismiss the Commonwealth's Answer and Issue Order to the Respondent to answer the issue contained in the brief.

Respectfully submitted,


Joe King, CZ-9499

P.O. Box 256

Waymart, Pa. 18472

Dated: 12-15- 2000.

A F F I D A V I T

I, JOE KING DO HEREIN CERTIFY THAT THE STATEMENTS AND TESTIMONY CONTAINED
HEREIN ARE TRUE AND CORRECT TO THE BEST OF MY ABILITY AND BELIEF. I UNDERSTAND
THE PENALTIES OF UNSWORN DOCUMENTATION TO AUTHORITIES.

DATED: 12-15- 2000

Joe King CZ 9499
Joe King, CZ 9499

IN THE COURT OF COMMON PLEAS OF
DAUPHIN COUNTY-CRIMINAL-DIVISION

19 95

ME	King, Joe	CASE #	1173 CD 95	CHARGE AGG. ASSLT.
AKA John D. Fleming				
ADDRESS	Unknown			OATH OF P. O. Michael J. Savel HPD
				BAIL 3-21-95 ROR
April 5, 1995 (D. J. 2-1-95)				3/25/95 Bail \$50,000 by Phil Miller 4-3-95
N	E 811645-2			Notice of Formal Arraignment
B	S	M	DOB 7-4-41	D.A. Information Filed 6/6/95
S. #	— —			Praecept Filed 4/24/95 8/1/95 6/6/95
ARRAIGNMENT	8/17/95	JURY	DEFENDANT REQUESTS COURT GP	TRIAL SET FOR 9/11/95
6/15/95 CAPIAS AWARDED & ISSUED, FORFEIT BAIL Aw.				

8-2-95 Sheriff return filed
 10-16-95 - Petition for reinstatement of bail or
 alternate place of confinement, filed
 11-30-95 Correspondence by Criminal
 Court Administrator filed
 Evans 2-9-96 Upon consid. of defendant's motion for
 Post-Conviction Collateral Relief, it is ordered
 that the motion is denied.
 8/28/96 Commonwealth's Motion to Modify
 the Criminal Information, filed
 Linfield 3-5-96 Rule to Show Cause, filed 3/11/96 is
 Granted upon the respondent to show cause
 why the prayer for the Within Pet. should
 NOT be granted.
 3-7-96 Commonwealth's Answer to Defendant's
 Motion to Dismiss Pursuant to Pa.R.Crim.
 P. Rule 100(c) 42 Pa.c.S.A. filed (See 1064 CD 95)
 Linfield 3-12-96 Order 3/11/96 filed. The rule is
 made ABSOLUTE, and the Camp is
 ANSWERED as requested. I further
 that the victim's injury was a fracture
 left arm.

JUSTICE	Solomon	8 53	CLERK CTS. FEE	100 00	C fee	3 57
CT 24 / CAT			DIST. ATTY. FEE	18 00	C. fee	3 50
CT 35 / CVC		15 00	SHERIFF'S FEE 5/1/96	59 48	C. fee	6 87
CT 35 / CC		15 00	CERTIFICATION		C. fee	3 50
CT 45 / EMS			ARD FEE		C. fee	7 28
CT 59 / JCP		5 00	PRISON DUI		K. fee	3 52
CT 121 / EMS			DRUG & ALCH. DUI		C. fee	7 16
CT 157 / DV		10 00	CRN TEST		C. fee	3 50
CT 167 / JPI		12 80	DUI SCHOOL		C. fee	6 80
TATE FINE			CONSTABLE		C. fee	3 50
OCAL FINE			CAPIAS	500	C. fee	6 80
OUNTY FINE			C. fee	3 50	ACT 158	5 00
JUSTICE CO	Solomon	18 67	C. fee	6 80		338 52

1173 TOTALS. fee 5/22/96 52 94

Benfet 3/12/96 Order (3-11-96) filed. The motion to dismiss
is pursuant to Rule 1100, it hereby
denied.

Heinfelter	MAR 12 1996 - Sentence Deferred (4-24-96) 1330	
Woodside	Pre-Sentence Report - state	
Duda	- motion to Dismiss on Rule 1100	Jury Sworn 3-11-96 14:30
	- motion dismissed / denied	Jury Retired 3-12-96 12:06
	- motion to Sequester - granted	Jury Returned 3-12-96 13:35
	- motion in Limine - granted	Verdict - guilty
	5,000.00 Bail	

3/13/96 Request for Presentence Investigation
Report filed See 1064CD 95

3/25/96 Bail Bond posted by Phil Miller
3/27/96 Bail Bond Returned. Defendant released
from DCP

4-1-96 Excerpt of Transcript of Proceedings Jury Trial
Hon. Joseph J. Klinefelter 3/12-96 Courtland, filed
(See 1064CD 95)

4/24/96 CAPIAS AWARDED & ISSUED FOR SENTENCE

5-13-96 - TICPA filed

~~5-15-96 - Order filed TICPA is Dismissed~~
Klinefelter v. D.A. [not been sentenced]

6-4-96 - Transcript of proceedings on 5-16-96
Before J. Klinefelter, filed

6-4-96 - Transcript of Proceedings (jury trial)
on March 11, 12 1996 By J. Klinefelter.

5-29-96 PA COMM. ON SENTENCING FILED

5-16-96 Sentence of the court that defendant pay a fine of

to the Commonwealth, that he pay the costs of prosecution, and that he undergo sentence
in a State Correctional Institution by separate or solitary confinement at labor, for and during the term
of Not more than 70 days Not less than 8 days to commence and be
computed from 5-16-96 and shall therein be kept fed, clothed, treated and
governed as is provided by law; and further that he be first sent and detained at the correctional diagnostic and
Classification Center located at the State Correctional Institution at Camp Hill Pennsylvania as provided by law.

And the Sheriff of Dauphin County is directed to deliver [Redacted] to the [Redacted]
to the Warden of said institution as soon as practicable, and that he be in custody until the sentence is executed with
credit for 262 Days Served. Post Sentence

rights held to by Judge [Redacted]

Defender ordered Victim Servers - 2,287.95

6-27-96 Sheriff Rec'd filee

391.47 7/1/96 Hanperl et al v. SCI Albion (See 1064CD 95)

59.00 (43.00)

150.47 6-17-97 Copy of docket sent as per correspondence.

12-3-97 - Transcript of proceedings - (sentencing
on (5-16-96) by judge: Joseph Klinefelter,
filed

SUPERIOR NOTICE

DC-198

MOTION FOR POST CONVICTION COLLATERAL RELIEF

Rev. 7-89

COMMONWEALTH OF PENNSYLVANIA VS	COURT AND DOCKET NUMBERS
<u>JOHN FLEMING A-K-A Joe KING</u> <small>(Name of Defendant)</small>	To be filled in by Clerk of Court

NOTE: List below those informations or indictments & offenses for which you have not completed your sentence.

INFORMATION OR INDICTMENT NUMBERS:

C.D 1064 95 / 11-73-95S. ASSLT. / ACT 10 ASL

I WAS CHARGED WITH THE FOLLOWING CRIMES:

C D 1064 95 / 1173 95S. ASSLT. / ACT 10 ASL

AND NOW, THIS 3rd DAY OF May, 1996
 SERVICE IS HEREBY ACCEPTED & COPY RECEIVED.
Chuk
DISTRICT ATTORNEY

1. MY NAME IS:

John Fleming A-K-A Joe King

2. I AM NOW

(A) On Parole (B) On Probation (C) Confined in DAUPHIN COUNTY PRISON

3.

I WAS SENTENCED ON _____, 19 _____ TO A TOTAL TERM

OF _____, COMMENCING ON _____, 19 _____ BY _____

JUDGE(S) _____

FOLLOWING A: Trial by jury Plea of guilty

Trial by a judge without a jury Plea of nolo contendere

4. I AM ELIGIBLE FOR RELIEF BECAUSE OF:

- (I) A violation of the constitution of Pennsylvania or laws of this Commonwealth or the constitution of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- (II) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- (III) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused an individual to plead guilty.
- (IV) The improper obstruction by Commonwealth officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.
- (V) A violation of the provisions of the constitution, law or treaties of the United States which would require the granting of federal habeas corpus relief to a state prisoner.
- (VI) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and that would have affected the outcome of the trial if it had been introduced.
- (VII) The imposition of a sentence greater than the lawful maximum.
- (VIII) A proceeding in a tribunal without jurisdiction.

5. THE FACTS IN SUPPORT OF THE ALLEGED ERROR(S) UPON WHICH THIS MOTION IS BASED ARE AS FOLLOWS: (State facts clearly and fully; argument, citations, or discussions of authorities shall not be included.)

(A) I know the following facts to be true of my own personal knowledge:

I HAVE REQUESTS before formal ARRAIGNMENT if I could make A REMOVAL OF my LAWYER. NEGLIGENCE AND LIES of my Lawyer MR DUDA AND THE COURT AND WAS Refused AND He did SHOW MISCONDUCT AND JUST did THINGS THAT WAS INADEQUATE during PRETRAIL, I am seeking To sue Him because He made NO EFFORTS To Help me IN NO WAY so I Now seek DAMAGES because of VIOLATION of my RIGHTS under U.S.C CONST. Amend. and IT WAS INAPPROPRIATE OF TREATMENT, MR. DUDA knowing He Told Lies To me. 9-9-95

10-18-95 - I Had MADE A REQUEST before by a motion for post Conviction COLLATERAL RELIEF To THE COMMONWEALTH, OFFICIALS of Clerk of COURT. INEFFECTIVE ASSISTANCE of COUNSEL WHICH IN THE CIRCUMSTANCES OF THEIR PARTICULAR CASE UNKNOTINED THE TRUTH my LAWYER MR. DUDA made HIMSELF UNAVAILABLE. I Had ASK for POST CONVICTION HEARING ACT of THE COURTS WHICH I did file.

(B) The following facts were made known to me by means other than my own personal knowledge (Explain how and by whom you are informed):

LISA GRASON, MARY BETH of THE PUBLIC DEFENDERS OFFICE Sherry FILED 10-16-95 PETITION FOR REINSTATEMENT OF BAIL OR ALTERNATE PLACE OF CONFINEMENT filed. MOTION FOR RULE 1100 WHICH He ALSO LIED TO ME DAY OF TRIAL. PERMITTING INFORMATION ONLY GIVEN TO HIM FROM ME TO give TO THE DA'S, VIOLATED my EQUAL PROTECTION AND CIVIL RIGHTS. ABUSED my DUE PROCESS OF THE LAW.

(C) In the event my appeal is allowed as requested under #4, the following are the matters which I intend to assert on that appeal (Specify the matters to be asserted if appeal is allowed)

Sue him for NEGLECT AND MISCONDUCT AND SHOW DISCRIMINATION AGAINST me. AND PREJUDICE. BY TAKING me TO COURT WHERE JUDGE WAS FAMILIAR AND PREJUDICE WITH THE CASE.

WILLIE HOLLANDS "WITNESSES"

BRIAN JACKSON OFFICER ARNOLD

LT JOHN GOSHERT

6. SUPPORTING EXHIBITS

(A) In support of this motion I have attached as exhibits:

Affidavits [Exhibit(s) No. _____]
 Records [Exhibit(s) No. _____]
 Other Supporting Evidence [Exhibit(s) No. _____]

(B) I have not attached any affidavits, records or other supporting evidence because

7. I HAVE TAKEN THE FOLLOWING ACTION(S) TO SECURE RELIEF FROM MY CONVICTION(S) OR SENTENCE(S):

(A) Direct Appeal (IF "YES," name the court(s) to which appeal(s) was/were taken, date, term and number, and result.)

 YES NO

(B) Previous proceedings in the courts of the Commonwealth of Pennsylvania

 YES NO

(IF "YES," name the type of proceedings (such as habeas corpus, etc.) — including former proceedings under the Post Conviction Hearing Act the Court(s) in which petition(s) was/were filed, date, term and number, and result, including all appeals.)

Under The Post Conviction Hearing ACT of The Courts There were
no None, Motion Change of COUNSEL. NO Response 12-12-95

(C) Habeas Corpus or other petitions in Federal Courts

 YES NO

(IF "YES," name the district in which petition(s) was/were filed, date(s), Court Number—civil action or miscellaneous, and result, including all appeals.)

(D) Other legal proceedings

 YES NO

(IF "YES," give complete details—type of action, court in which filed, date, term and number, and result, including all appeals.)

Under The Post Conviction Hearing ACT of The Courts There were None. An
Motion for Change of COUNSEL. 12-12-95

8. FOLLOWING MY ARREST, I WAS REPRESENTED BY THE FOLLOWING LAWYER(S): (Give the lawyer's name and the proceeding at which he represented you.)

Mike DUDA of The Public Defenders Office.

ASK COURT TO HAVE HIM REMOVED FROM CASE.

9. THE ISSUES WHICH I HAVE RAISED IN THIS MOTION HAVE NOT BEEN PREVIOUSLY LITIGATED AND ONE OF THE FOLLOWING APPLIES:

- (I) The allegation of error has not been waived.
- (II) If the allegation of error has been waived, the alleged error has resulted in the conviction or affirmance of sentence of an innocent individual."
- "(III) If the allegation of error has been waived, the waiver of the allegation of error during pretrial, trial, post-trial or direct appeal proceedings does not constitute a state procedural default barring federal habeas corpus relief."

The failure to litigate this issue(s) prior to or during trial or on direct appeal could not have been the result of any rational strategic or tactical decision by counsel.

10. BECAUSE OF THE FOREGOING REASONS, THE RELIEF WHICH I DESIRE IS:

- (A) Release from custody and discharge
- (B) A new trial
- (C) Correction of sentence
- (D) Other relief (specify):

Ask Sue Mike DUDA To Have Him Removed
from Case.

11. (A) I am ABLE NOT ABLE to pay the costs of this proceeding.

I have \$ _____ in my prison account.

(B) My other financial resources are: NONE

12. (A) I do not have a lawyer and I am without financial resources or otherwise unable to obtain a lawyer

(1) I request the court to appoint a lawyer to represent me.

(2) I do not want a lawyer to represent me.

(B) I am represented by a lawyer. (Give name and address of your lawyer.)

Myles A. Kauffman 260 S. BROAD STREET, SUITE 600
PHILADELPHIA, PA 19102

John Fleming
(Signature of Defendant)

UNSWORN DECLARATION

I, _____ do hereby verify that
Your Name

the facts set forth in the above motion are true and correct

to the best of my personal knowledge or information and

belief, and that any false statements herein are made sub-

ject to the penalties of Section 4904 of the Crimes Code

(18 Pa. C.S. § 4904), relating to unsworn falsification to

authorities.

John Fleming AKA Joe
Signature of Defendant

No Notary
Required